

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

GREENWAY DESERT CAR WASH, LLC

Case 28–CA–171662

and

JESSE SIREKIS, an Individual

Alexander J. Gancayco, Esq. for the General Counsel.

John J. Epp, Respondent *Pro Se*.

DECISION

STATEMENT OF THE CASE

MARA-LOUISE ANZALONE, Administrative Law Judge. I heard this case on July 26 and 27, 2016, in Phoenix, Arizona. The case was tried following the issuance of a Complaint and Notice of Hearing (the complaint) by the Regional Director for Region 28 of the National Labor Relations Board (the Board) on May 31, 2016.

The complaint was based on a charge in Case 28–CA–171662, filed by Charging Party Jesse Sirekis (Sirekis). The General Counsel alleges that Respondent Greenway Desert Car Wash, LLC (Respondent) engaged in violations of Section 8(a)(1) of the National Labor Relations Act, as amended, 29 U.S.C. sec. 151, et. seq. (the Act). Specifically, it is alleged that, after Sirekis complained, on behalf of himself and his coworkers, that a supervisor had stolen employees' tips, Respondent: (a) threatened him with discharge; (b) disparaged him; (c) unlawfully interrogated him and other employees; (d) created the impression that it was monitoring him; and (e) discharged him, in each case based on his protected concerted activity. Respondent filed a timely answer to the complaint denying the commission of each of the alleged unfair labor practices.

At trial, all parties were afforded the right to call, examine, and cross-examine witnesses, present any relevant documentary evidence, argue their respective legal positions orally, and file posthearing briefs.¹ A posthearing brief was filed by the General Counsel and has been
 5 carefully considered; Respondent declined to file a posthearing brief. Accordingly, based upon the entire record herein, including the General Counsel's posthearing brief and my observation of the credibility of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and the evidence establishes that Respondent, a limited liability company, is engaged in the business of providing car wash and car detailing services in
 15 Phoenix, Arizona. The evidence establishes, the parties admit, and I find that, in conducting its business operations, Respondent derived gross revenues in excess of \$500,000, and also purchased and received at its Phoenix facility goods valued in excess of \$5,000 from other enterprises located within the State of Arizona, each of which enterprises having received those goods directly from points outside the State of Arizona. It is alleged, Respondent
 20 admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. FACTUAL BACKGROUND

Respondent operates a car wash in Phoenix, Arizona (Respondent's facility or the car wash), employing approximately 20 workers. Respondent's owner John Epp and General Manager Robert Menendez (Menendez), oversee operations at the car wash. Also working at the car wash is owner Epp's son, Christopher Epp (Chris Epp), who initially worked in several nonmanagement positions but was promoted to assistant manager in November 2015.
 30 Charging Party Sirekis worked as a car wash attendant (i.e., cleaning and detailing vehicles) between March and December 2015.² Respondent's managers testified that Sirekis was considered a good, dependable employee. (Tr. 40–43, 47, 79, 276, 286–287, 449–450, 555)

A. Worker Dissatisfaction with Working Conditions

Car wash attendants are generally paid \$6.00 per hour, plus tips and commissions on sales from car wash vouchers. A customer's tip is to be submitted to either a supervisor or a crew chief,³ to be pooled and divided equally among the employees who worked on that customer's car. (Tr. 46–47, 70–73, 476–477) The General Counsel presented the testimony of three car
 40 wash attendants (two former and one current), as well as Sirekis himself who testified that they frequently shared complaints about individuals, including supervisors, stealing tips from

¹ Abbreviations used in this decision are as follows: "Tr." for transcript; "GC Exh. ___" for General Counsel's Exhibit; "R. Exh. ___" for Respondent's Exhibit and "GC Br. at ___" for the General Counsel's posthearing brief.

² Unless otherwise noted, all dates herein refer to the year 2015.

³ "Crew chiefs" are not alleged as either Section 2(11) supervisors or Section 2(13) agents under the Act.

the pool. In such discussions, which frequently took place during the employees' unpaid break periods,⁴ they also discussed the theft of voucher sales commissions and the fact of the unpaid breaks themselves. The General Counsel's witnesses testified consistently that these discussions took place on a daily or near daily basis. According to the credible testimony of
5 former car wash attendant Dontrell Reed (Reed), General Manager Menendez was present for at least one discussion during the summer of 2015, during which Sirekis spoke up, complaining that his commissions and tips were being stolen and that he was not getting enough paid hours at work. (Tr. 197–200, 225–226, 239–241, 279, 562–568)

10 In early July, employees discussed tip and commission stealing on at least two occasions. On July 1, Sirekis, Reed and another employee, Ricardo (last name unknown) spoke in the break room. Sirekis accused the owner's son, Chris Epp, of stealing his voucher commissions; Reed, for his part, said that Yard Foreman Celestino Medina⁵ had been "taking some of the tips." They also discussed Respondent's unpaid-break practice, agreeing that
15 they were being made to spend too much unpaid time at work. (Tr. 166, 201–202, 254, 567–568) On July 4, Sirekis had a similar conversation with fellow employees Reed, Ricardo, Jacob Grant (Grant) and Weston Nixon (Nixon). Again, the employees discussed their dissatisfaction with their low pay and unpaid breaks, as well as the theft of tips by Medina. The possibility of a complaint petition was raised, and Sirekis and Grant each said they would
20 be willing to sign.⁶ There was also discussion of electing someone to relay the employees' complaints to owner John Epp, but this idea failed to gain traction, with employees expressing concerns about their job security. (Tr. 216–217, 224–225, 241–243, 569–572)⁷

25 Roughly 4 months later, in November, Chris Epp was named assistant manager. Both Respondent and General Counsel witnesses agreed that the elevation of "the boss' son" was not well received among the work force. According to Sirekis, employees complained to each other that, as a manager, Chris Epp continued to steal tips and also treated them rudely, cursed at them in front of customers and forced them to perform hazardous cleaning without protective gear. According to General Manager Menendez, Sirekis informed him directly that
30 the employees "didn't really respect" their new assistant manager. Chris Epp testified that he felt Sirekis, in particular, did not respect his authority. (Tr. 199, 202–204, 265–267, 303–308, 449–450, 452, 585–587)

⁴ The record is undisputed that Respondent regularly forced employees to take unpaid breaks (up to 2 hours) when business was slow. (Tr. 197–198, 278–279, 476)

⁵ There was limited evidence that this individual (frequently referred to in the transcript as "Cele") had the power to determine employees' schedules and was held out by John Epp as an agent of management (see Tr. 661–663), but he was not alleged by the General Counsel to be either a supervisor or agent of Respondent.

⁶ The record is muddled as to which employee actually made this suggestion.

⁷ I do not credit Sirekis' uncorroborated testimony that, during this meeting, he suggested that the employees could start a union.

B. Sirekis Reports Employee Complaints to Owner John Epp

On November 30, Sirekis and Chris Epp had a confrontation on the job. Neither man's account of what prompted this incident was particularly convincing,⁸ but I find this irrelevant, considering what followed. Essentially, after the two men physically faced off, Sirekis headed to John Epp's office, where he accused Chris Epp of stealing tips from him and other employees. John Epp interrupted, stating that there were "two sides to a coin," and ordered Sirekis to go and get Chris Epp. When the two reported back to John Epp's office, the owner confronted his son with Sirekis' accusation, which Chris Epp denied, accusing Sirekis of lying and attempting to "throw him under the bus."⁹ After Sirekis insisted that complaints had been related to him by fellow employees, the owner demanded, "are you trying to be a spokesperson for everyone else?" He continued, asking, "if these accusations are being made, why aren't the employees here?" Sirekis replied that he was simply trying to be helpful. As John Epp testified, he felt that Sirekis should not be coming to him with his coworkers' issues, including complaints about tip stealing. (Tr. 80–82, 90, 94, 98, 466, 503, 523, 525, 529, 591–596)

C. Sirekis' Last Day of Work at the Car Wash

The major factual dispute in this case is whether, 5 days later (on December 5), Sirekis walked off the job or was discharged. Sirekis testified that, on the day in question, various employees told him that Chris Epp had been "gloating" that he was being fired, prompting him to ask both John and Chris Epp whether this was true. After they each told him to stay focused on his work, Sirekis claims he was approached by General Manager Menendez in the break room, who told him, "John [Epp] says you're fired." Before leaving the break room, Sirekis sent text messages to two car wash employees stating that he had just been fired. Sirekis explained that he sent the first message only minutes after Menendez' comment to ensure that its recipient—with whom he frequently socialized after work—would know he had left and not wait for him. He sent the second text message 23 minutes later.¹⁰ Later that day, Sirekis also sent Menendez a text stating, "nice working with you." (Tr. 603–607; GC Exh. 10)

Respondent's thoroughly different version of the day's events, as testified to by Chris Epp and current employee Sean Sitton (Sitton) involved Sirekis having another "altercation" with

⁸ Chris Epp testified that Sirekis said something "dark" and "threatening" to him. Sirekis, for his part, accused Chris Epp of telling others that he was a "blackmailer" and was going to get fired. (Tr. 500–501, 588–591)

⁹ I do not credit Sirekis' testimony regarding this remark, which appeared edited mid-sentence. (See Tr. 596–597; "what's this I hear about you trying to throw me—you all getting together and trying to throw me under the bus?")

¹⁰ As such, the screenshots of these text messages offered by the General Counsel do not qualify for the "excited utterance" exception to the hearsay rule, in that Sirekis sent them while was no longer under the requisite "stress of excitement" of having been discharged. See Advisory Notes to FRE 803(2). I agree with the General Counsel that the first of the two text messages (GC Exh. 8) qualifies as a "present sense impression" under FRE 803(1), but find that the second (GC Exh. 7) was sent too late to meet the standard for that exception. See *Cumberland Farms Dairy of New York*, 258 NLRB 900, 900 n.1 (1981).

Chris Epp, angrily confronting John Epp, stripping off his “red shirt” and walking off the job. Curiously, John Epp himself did not testify as to the details of this dramatic event; according to him, Sirekis simply “left work” on the day in question and did not report the next day as scheduled. (Tr. 101–102, 435–436, 441–443, 543–544) General Manager Menendez, for his part, denied telling Sirekis he was fired, claiming to have been off-site when he left. Menendez did testify, however, that the following day, he—on orders from John Epp—discharged Sirekis via voice mail for failing to show up to work. John Epp adamantly denied ever issuing any such order, instead claiming that he had “no information” about what had happened to Sirekis until at least four days later when Menendez informed him of the “nice working for you” text message. (Tr. 101–104, 311–312)

D. John Epp Interviews Employees about Sirekis’ Charge

In mid-March, John Epp interviewed “each and every one” of the car wash employees who had worked during Sirekis’ tenure about the facts underlying his unfair labor practice charge, specifically asking whether there was any merit to his claims. He also asked them if they “had issues” regarding their tips or their treatment by management and whether they had spoken with Sirekis about any such concerns. By his own admission, John Epp never explicitly told the workers that participation in the interview was voluntary. At various points during the interviews, he did offer them certain assurances, stating, “whatever is stated here good, bad, or indifferent, won’t reflect upon your job. You always have a job with me.” It is undisputed, however, that he began his questioning before giving them such assurances; as he admitted, “they were asked questions first.” (Tr. 125–132)

E. Sirekis “Serves” Respondent with His Unfair Labor Practice Charge

On March 29, 2016, having filed the underlying unfair labor practice charge in this case, Sirekis paid a visit to the car wash. As he credibly testified, he understood from Region 28’s correspondence that it was his obligation to put Respondent on notice of his charge. (Tr. 627–628, 676; see GC Exh. 11) Upon entering the business, Sirekis showed John Epp an envelope containing a copy of the charge and stated that he had filed a complaint with the “labor board.” He then confronted Chris Epp, stating that he would sue him, John Epp and possibly John Epp’s wife. Admittedly incensed, Chris Epp responded by yelling that Sirekis was a “piece of shit,” and was lucky that he did not “flip the fuck out”¹¹ and finally threatening to call the police if Sirekis did not leave. As Chris Epp admitted, he was angry because he considered the Sirekis’ unfair labor practice charge to be a threat to his family’s business. There is no evidence that Chris Epp’s comments were overheard by anyone other than Sirekis. (Tr. 474, 506–508, 629, 677–678)

According to Sirekis, as he began leaving, he observed former coworkers waving at him but informed them that he had to leave. Then, he testified, John and Chris Epp followed him out, threatening to call the police. There is no evidence that any car wash employee overheard this alleged threat. Upon leaving the property, Sirekis himself called the police to ensure that they got to hear “both sides.” Eventually, two police officers arrived, took

¹¹ Sirekis’ version of this conversation is similar, except that he recalls Chris Epp stating that Sirekis was “lucky that he hadn’t kicked my ass yet.” (Tr. 629)

statements and warned Sirekis that he would be arrested for trespassing if he returned to the property. (Tr. 629–630)

F. John Epp Re-Interviews Employees

Approximately 3 weeks before the hearing in this matter, John Epp, accompanied by Menedez, re-interviewed at least four employees, including witness Nixon, about the complaint allegations, this time prefacing his remarks by stating that he was “going to court” because of Sirekis’ complaints against Respondent. Again, without stating that their participation was voluntary, he then asked each interviewee whether any other employees had mentioned concerns about wages or tips and whether they were “aware of any other situations with any other employees.” He also asked each employee whether they had been “subpoenaed to go to court,” and, if not, whether they would agree to would come to court and support him. It also appears from John Epp’s testimony that he “helped” prepare more than one employee to testify by, in his words, giving them “a mock trial.” He testified that, at an unknown point during the interview process, he assured these employees that “there would be no repercussions” and “no retaliation.” (Tr. 140, 142, 144–146, 148, 151–154)

ANALYSIS

A. Credibility

A credibility determination may rely on a variety of factors, including the context of the witness’ testimony, the witness’ demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, it is common for a fact finder to believe some, but not all, of a witness’ testimony. *Daikichi Sushi*, 335 NLRB at 622.

While I generally found Respondent’s witnesses credible on certain ancillary matters, they were notably evasive, contradictory and, in the case of John Epp, conspicuously silent on the most critical factual issue in the case: whether Sirekis quit or was discharged. General Manager Menendez denied delivering the news to Sirekis on December 5 as alleged and claimed instead that he—under orders from John Epp—discharged Sirekis the following day for abandoning his job. (Tr. 311–316) But John Epp flatly denied ever issuing such an order, apparently doubling down on the “resignation” story. Even more suspect than this glaring contradiction was the fact that, despite being the very person to whom Sirekis allegedly resigned, John Epp himself never testified about this event, instead offering the testimony of onlookers who simply claim to have seen Sirekis remove his shirt and leave the premises. These two witnesses—current employee Sitton and Chris Epp—presented rehearsed testimony woefully insufficient to give life to this account.¹² Ultimately, Respondent’s

¹² I note in particular that Sitton testified in a highly forced manner, almost exclusively in response to leading questions by Respondent’s owner John Epp (who had personally requested that Sitton testify). (Tr. 442)

witnesses simply could not agree on the circumstances of Sirekis' separation of employment, leading me to conclude that their testimony on this issue is incredible and therefore unreliable.

I note that Charging Party Sirekis appeared on more than one occasion to augment (somewhat gratuitously) the scope of his protected conduct, as well as its concerted nature. Notably lacking was any corroborating testimony by General Counsel witnesses for various aspects of his account, such as his claim to have suggested unionization to his coworkers. That said, I found, based on his demeanor and body language, that his description of Menendez discharging him, as corroborated by the text message he sent minutes later, to be thoroughly credible.

B. The Individual Unfair Labor Practice Allegations

As noted, the complaint in this matter alleges that Respondent violated Section 8(a)(1) of the Act, first, by discharging Sirekis because he engaged in protected concerted activities; and, second, by interfering with the rights of its employees guaranteed under Section 7 of the Act. Section 7 provides in pertinent part that:

[e]mployees shall have the right to self-organization, to form, join, or assist any labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities.

See 29 U.S.C. § 151. In other words, federal labor law guarantees employees the right to take action, in concert, to try to improve their job conditions, and an employer that interferes with that right, or punishes an employee for exercising it, is in violation of that law.

1. Sirekis' discharge

As noted above, based on the credible record evidence, I find that Respondent, by Menendez, discharged Sirekis on December 5, as alleged. I next reach the issue of whether Respondent took this action against him in retaliation for his protected activity. As set forth below, I find that it did.

In cases that turn on an employer's motive, the Board—with Supreme Court approval—applies its *Wright Line* standard. *Phoenix Transit System*, 337 NLRB 510, 510 (2002), enfd. 63 Fed. Appx. 524 (D.C. Cir. 2003). Under the *Wright Line* framework, the General Counsel must establish four elements by the preponderance of the evidence. First, the General Counsel must show the existence of activity protected by the Act, generally an exercise of an employee's Section 7 rights. Second, the General Counsel must show that the employer was aware that the employee had engaged in such activity. Third, the General Counsel must show that the alleged discriminatee suffered an adverse employment action. Fourth, the General Counsel must establish a line or nexus between the employee's protected activity and the adverse employment action showing that the employee's protected conduct was a motivating factor (in whole or in part) for the employer's adverse employment action. See *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

Proof of an employer's unlawful motivation can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. *Robert Orr/Sysco Food Services*, 343 NLRB 1183, 1184 (2004); *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003); *Fluor Daniel, Inc.*, 304 NLRB 970 (1991), *enfd.* 980 F.2d 1449 (11th Cir. 1992). Inferences of animus and discriminatory motivation may be warranted under all the circumstances of a case. Evidence of suspicious timing, shifting reasons given in defense, departures from past practices and tolerance of behavior for which the discharged employee was fired, all support inferences of animus and discriminatory motivation. See *Lucky Cab Co.*, 360 NLRB 271 (2014); *Electronic Data Systems Corp.*, 305 NLRB 219 (1991); *Bryant & Cooper Steakhouse*, 304 NLRB 750 (1991); *Shattuck Denn Mining Corp.*, 151 NLRB 1328 (1965), *enfd.* 362 F.2d 466 (9th Cir. 1966). The role of animus in an employee's discharge may also be demonstrated by the employer's contemporaneous violations of the Act. See *Austal USA*, 356 NLRB 363, 364 (2010) (animus in discharge demonstrated by employer's contemporaneous unlawful threats and interrogations).

If the General Counsel establishes these four elements, he is said to have made out a *prima facie* case of unlawful discrimination, i.e., a presumption that the employee's protected activity was a motivating factor in the employer's decision and therefore the adverse employment action violated the Act. *Adams & Associates, Inc.*, 363 NLRB No. 193, slip op. at 6 (2016); *Libertyville Toyota*, 360 NLRB 1298, 1301 (2014), *enfd.* 801 F.3d 767 (7th Cir. 2015). At this point, the burden of persuasion shifts to the employer to show that it would have taken the same action even in the absence of the protected activity. *Wright Line*, *supra* at 1089. The employer's burden, however, cannot be satisfied by proffered reasons that are found to be pretextual, i.e., false reasons or reasons not in fact relied upon for the discharge. Indeed, where the reason advanced by an employer for a discharge either did not exist or was not actually relied on, the inference of unlawful motivation remains intact, and is in fact reinforced by the pretextual reason proffered by the employer. *L.S.F. Transportation, Inc.*, 330 NLRB 1054, 1075 (2000) (citations omitted); see also *Shattuck Denn Mining Corp.*, 362 F.2d at 470; *Stevens Creek Chrysler Jeep Dodge*, 357 NLRB 633, 637, slip op. at 5 (2011) (pretext finding will defeat employer's attempt to meet its rebuttal burden), *enfd.* sub nom. *Mathew Enterprise, Inc. v. NLRB*, 498 Fed. Appx. 45 (D.C. Cir. 2012).

As described below, in applying these principles to Sirekis' discharge, I find that the General Counsel met his burden in establishing a *prima facie* case. I further reject as pretext Respondent's proffered defenses that Sirekis either resigned or was discharged for job abandonment. As such, I find that Sirekis was discharged in violation of the Act as alleged in paragraphs 4(d), (e), and 5 of the complaint.

a. Sirekis engaged in protected, concerted conduct

The record is replete with evidence that Sirekis—along with his coworkers—regularly commiserated with each other over having their tips and commissions pilfered, as well as being underpaid and forced to take unpaid breaks. Wage discussions among employees have long been considered to be at the core of Section 7 rights in that “[d]issatisfaction due to low wages is the grist on which concerted activity feeds.” *Whittaker Corp.*, 289 NLRB 933 (1988) (citing *Jeannette Corp. v. NLRB*, 532 F.2d 916, 919 (3d Cir. 1976)). Indeed, discussions about wages are often the precursor to organizing and seeking union assistance.

Id. (citing *Valley Slurry Seal Co.*, 343 NLRB 233, 245 (2004); *Automatic Screw Products Co.*, 306 NLRB 1072 (1992), *enfd. mem.* 977 F.2d 582 (6th Cir. 1992); *Triana Industries*, 245 NLRB 1258, 1258 (1979)). While the record does not support a finding that Respondent's car wash attendants were all "similarly situated" with respect to the issue of tip stealing, there is credible evidence that Sirekis' November 30 complaint to John Epp was preceded by numerous group discussions about the issue, at least one which included a debate about whether to relay their concerns to management. *Top of Waikiki, Inc.*, 176 NLRB 76, 79 (1969) (employees' voicing opposition to employer's change in tip policy is concerted even absent formal meetings or designation of spokesperson), *enfd.* 429 NLRB 419 (1970).¹³

By speaking up to Respondent's owner on behalf of himself and other workers about tip stealing by Assistant Manager Chris Epp, Sirekis engaged in further protected concerted activity. As the Board has held, employees who complain about their employer's tipping practices engage in protected activity, in that their claim is "effectively about their wages, arguably *the* central term and condition of employment." *Wynn Las Vegas LLC*, 358 NLRB 674, 676 (2012) (citations omitted); see also *127 Restaurant Corp.*, 331 NLRB 269, 276 (2000) (voicing employee complaints about being forced to share tips with supervisors constitutes protected activity). Under these circumstances, even absent proof that he had been formally designated as the employees' spokesperson, Sirekis' complaint to John Epp was clearly not one "confined to [his] personal grievance." *The Hamlet Steak House, Inc.*, 197 NLRB 632, 634–635 (1972); see also *Gold Coast Restaurant Corp.*, 304 NLRB 750, 752–753 (1991) (finding concerted complaint where single employee, acting without authority from other employees, reported to management the group's dissatisfaction with their gratuity pay).

b. Respondent was aware of, and/or believed in, Sirekis' conduct

There is ample evidence that Respondent was aware that Sirekis was involved in protected concerted conduct. Menendez, who discharged Sirekis, witnessed him on at least one occasion complain to coworkers about his commissions and tips being stolen, and shortly before his discharge, Sirekis also told Menendez himself that the employees as a whole did not respect Chris Epp in his new management role. Finally, John Epp appeared to put stock in Sirekis' claim to be relaying his coworkers' complaints, taking it seriously enough to probe into whether Sirekis was acting as the workers' official "spokesperson." Thus, while I have found that Sirekis did, in fact, engage in protected concerted activity, I note that he would be protected by the Act even had he not done so, in that Respondent believed that Sirekis was attempting to bring a complaint on behalf of himself and others.¹⁴

¹³ Such preliminary discussions are considered concerted, in that "inasmuch as almost any concerted activity for mutual aid or protection has to start with some kind of communication between individuals, it would come very near to nullifying the rights of organization and collective bargaining guaranteed by Section 7 of the Act if such communications are denied protection because of lack of fruition." *Mushroom Transportation Co. v. NLRB*, 330 F.2d 683, 685 (3d Cir. 1964).

¹⁴ The Board has long held that an employer may violate the Act when it takes action based on a mistaken belief that an employee has engaged in concerted activity. *NLRB v. Link Belt Co.*, 311 U.S. 584 (1941); see also *Alternative Energy Applications, Inc.*, 361 NLRB No. 139, slip op. at 4 n.8 (2014) (citing *Monarch Water Systems, Inc.*, 271 NLRB 558 n.3 (1984)).

c. Respondent harbored unlawful animus against Sirekis

I further find that Respondent discharged Sirekis because of his November 30 complaint and specifically based on John Epp's dissatisfaction that Sirekis, on behalf of his coworkers, had so boldly and explicitly accused Chris Epp of theft. This was apparent from John Epp's own testimony, in which he flatly admitted that he felt Sirekis should not have come to him with his coworkers' issues. The timing of Sirekis' discharge—mere days following his complaint—is also highly suggestive of animus. *NLRB v. American Geri-Care, Inc.*, 697 F.2d 56, 60 (2d Cir. 1982) (inference of antiunion animus is proper when the timing of the employer's actions is "stunningly obvious"), cert. denied 461 U.S. 906 (1983). In addition, as I find below, Respondent also committed independent violations of the Act, significantly including John Epp unlawfully interrogating his entire workforce regarding Sirekis' protected conduct. This provides additional support for an animus finding. See, e.g., *675 West End Owners Corp.*, 345 NLRB 324, 336 (2005).

Finally, as discussed in more detail below, Respondent has, throughout this proceeding, failed to articulate a consistent or even coherent non-pretextual explanation for Sirekis' departure from Respondent's facility on his last day of work, leading me to conclude that its dual claims (i.e., that Sirekis either resigned on December 5 or was discharged for no-showing the following day) each constitute pretext. This further supports an inference of discriminatory motive. *El Paso Electric Co.*, 355 NLRB 428, 428 n.3 (2010) ("we rely only on the judge's finding that the Respondent's reasons for its actions were pretextual, raising an inference of discriminatory motive and negating the Respondent's rebuttal argument that it would have taken the same action in the absence of [the employee's] protected activities"); see also *Whitesville Mill Service*, 307 NLRB 937 (1992) ("we infer from the pretextual nature of the reasons for the discharge advanced by the [r]espondent that the [r]espondent was motivated by union hostility") (citing *Shattuck Denn Mining Corp. v. NLRB*, supra).

d. Respondent failed to rebut the General Counsel's case

Respondent—which elected not to file a post-hearing brief—has apparently decided not to take a position on whether to argue that Sirekis quit or was discharged. Nonetheless, at hearing, one of Respondent's witnesses (Menendez) offered something of a hybrid version of Sirekis' separation from Respondent's employ. In this "alternate ending," Menendez reacted to the sudden, mid-shift disappearance of a reliable and valued employee (followed by a mysterious farewell text message from that employee) by doing nothing until the following day when asked by John Epp what "had happened" to Sirekis. I find this explanation of events—notably contradicted by John Epp himself—wholly unconvincing on its face.¹⁵

¹⁵ Visibly uncomfortable throughout his testimony, Menendez appeared determined to sanitize the evidence for his employer's benefit. For example, when asked whether Sirekis—or any other employee—had ever raised complaints about tip stealing at work, Menendez insisted no such complaints had been made "until after all this started happening, not until after this case." Confronted with his Board affidavit, he then admitted that, in fact, Sirekis and another employee had complained about tip stealing in November 2015, the month prior to Sirekis' discharge. (Tr. 288–295)

2. Allegations regarding coercive conduct

Section 8(a)(1) of the Act provides: “It shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7.” The test under Section 8(a)(1) does not turn on the employer’s motive or whether the coercion succeeded or failed. Instead, the test is whether the employer engaged in conduct, which it may be reasonably said, tends to interfere with the free exercise of employee rights under the Act. This objective test requires an assessment of all the surrounding circumstances in which the conduct or statement is made. *Rock Valley Trucking Co.*, 350 NLRB 69, 79 (2007); *Electrical Workers Local 6 (San Francisco Electrical Contractors Assn.)*, 318 NLRB 109 (1995); *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985).

a. *The November 30 Conduct*

i. Threat of discharge

The General Counsel alleges that on November 30, Chris Epp threatened Sirekis with discharge for engaging in concerted activities by bragging at work that Sirekis enjoyed “blackmailing people” and was going to be fired. According to the General Counsel, the reference to blackmail “clearly referred to Sirekis’ protected, concerted activities,” rendering the remarks an unlawful threat of discharge. (GC Br. at 13) Even assuming that to be the case, the record is devoid of reliable evidence of Chris Epp making the alleged comment. While Sirekis testified that a female coworker, “Dillon,” informed him that, on November 30, Chris Epp had accused him of enjoying blackmail and threatened to discharge him, this is plainly hearsay and cannot support a finding of violation.¹⁶

Accordingly, I recommend dismissal of this allegation, set forth at paragraph 4(b) of the complaint.

ii. Interrogation

The General Counsel next alleges that, in response to Sirekis’ presentation of tip stealing complaints, John Epp unlawfully interrogated him by asking whether he was trying to act as a “spokeperson” for other employees. I agree.

The test for determining whether questioning of an employee violates Section 8(a)(1) of the Act is whether it would reasonably tend to coerce employees in the exercise of their Section 7 rights. *Grand Canyon University*, 362 NLRB No. 13, slip op. at 1 (2015) (citing *Hanes Hosiery, Inc.*, 219 NLRB 338, 338 (1975)). To make this determination, the Board applies the totality-of-circumstances test which examines the following factors: (1) the background (i.e., whether the employer was hostile toward or discriminated against union activity); (2) the nature of the information sought; (3) the identity of the questioner; (4) the place and method of the interrogation; (5) the truthfulness of the employee’s reply, e.g., did the employee attempt to conceal his or her union activity; and (6) whether the interrogated employee was an open and active union supporter. *Rossmore House*, 269 NLRB 1176, 1178

¹⁶ “Dillon” did not testify.

n.20 (1984), affd. 760 F.2d 1006 (9th Cir. 1985). These factors “are not to be mechanically applied”; they represent “some areas of inquiry” for consideration in evaluating an interrogation’s legality. *Id.*

5 Here, the majority of the *Rossmore House* factors support a finding of unlawful interrogation. Clearly indicative of coercion was John Epp’s status as owner and the highly protected nature of the information sought: whether Sirekis’ role in presenting other employees’ complaints and those employees had not come to management individually, which is precisely the type of information the Act privileges employees to keep to themselves.
10 *Custom Window Extrusions*, 314 NLRB 850, 858 (1994). While the conversation was in fact initiated by Sirekis, his purpose in doing so was to exercise his Section 7 rights, to which John Epp reacted with significant hostility. It is unsurprising that, faced with this verbal offensive, Sirekis declined to disclose how he came to bring his coworkers’ complaints, instead offering that he was just trying to be helpful. Under such circumstances, I find that John Epp’s
15 questioning had a reasonable tendency to coerce Sirekis in the exercise of his protected concerted activity, and is violative of Section 8(a)(1) of the Act. See, e.g., *Quality Drywall Co.*, 254 NLRB 617, 619-620 (1981) (questioning in an attempt to identify employees’ spokesperson coercive); *Camaco Lorain*, 356 NLRB 1182, 1183 (2011) (employees’ evasive response to interrogation in effort to conceal protected activity evinces coercive nature of
20 questioning).

Accordingly, I find that Respondent, through John Epp, violated Section 8(a)(1) of the Act on November 30 when he interrogated Sirekis, as alleged in paragraph 4(c)(2) and 5 of the complaint.

25 iii. Impression of surveillance

The General Counsel additionally alleges that, by asking whether Sirekis was trying to be “a spokesperson for everybody else,” John Epp unlawfully created the impression of
30 surveillance. I disagree.

The Board has held that under the Act “[e]mployees should not have to fear that ‘members of management are peering over their shoulders, taking note of who is involved in [protected] activities, and in what particular ways.’” *Conley Trucking*, 349 NLRB 308 (2007) (quoting
35 *Fred’k Wallace & Son, Inc.*, 331 NLRB 914 (2000)). The Board’s test for determining whether an employer has created an impression of surveillance is “whether the employees would reasonably assume from the employer’s statements or conduct that their [protected] activities had been placed under surveillance.” *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 963 (2004). Significantly, when an employer tells employees that it is aware of their
40 protected concerted activities, but fails to tell them the source of that information, it violates Section 8(a)(1) “because employees are left to speculate as to how the employer obtained the information, causing them reasonably to conclude that the information was obtained through employer monitoring.” *Stevens Creek Chrysler Jeep Dodge*, 353 NLRB 1294, 1296 (2009),
45 affd. and incorporated by reference 357 NLRB No. 57 (2011), enfd. 498 Fed. Appx. 45 (D.C. Cir. 2012) (citations omitted).

It is certainly true that an unlawful impression of surveillance may be created where a manager indicates, without explaining the source of his knowledge, that he is aware of the

identity of a “ring leader” for employee complaints. However, in this case, the source of John Epp’s knowledge was plain: Sirekis himself had just reported that he was relaying coworkers’ complaints. As such, even viewed rhetorically, John Epp’s question as to whether Sirekis was attempting to act as a spokesperson did no more than seek to restate and
5 (unlawfully, as noted above) clarify Sirekis’ own remark. As such, I do not conclude that a reasonable employee in Sirekis’ position would not be left speculating about whether their protected conduct was being monitored.

Accordingly, I recommend dismissal of this allegation, set forth at paragraphs 4(c)(1) and
10 5 of the complaint.

b. The March 29, 2016 Conduct

According to the General Counsel, Respondent committed 3 independent violations of
15 8(a)(1) of the Act during Sirekis’ March 29 visit to the car wash: (a) Chris Epp disparaging Sirekis by calling him a “piece of shit”; (b) John and Chris Epp threatening to call the police on Sirekis; and (c) Chris Epp threatening to harm Sirekis physically. The facts of these allegations are essentially undisputed, with the Epps admitting to making the statements in question.¹⁷ Nor is there any dispute that each of the admitted statements was precipitated by
20 Sirekis’ presentation of his unfair labor practice charge and threat of litigation against Respondent as well as individual members of the Epp family. As set forth below, I agree with the General Counsel with respect to each of these allegations.

i. Threat to call police

It is well settled that, by responding to an employee’s protected activity at or near its facility by threatening to call the police, an employer violates the Act. *Winkle Bus Co.*, 347 NLRB 1203, 1218–1219 (2006); *Roadway Package Systems*, 302 NLRB 961, 973–74 (1991). An employee, such as Sirekis, who actually participates in the service of an unfair labor
30 practice charge unquestionably engages in protected activity. *United States Postal Service*, 352 NLRB 923 (2008). There being no evidence that Sirekis’ presence or actions disrupted Respondent’s operations or posed a threat of any kind, his conduct retained the Act’s protection.

As such, I find that, by threatening to call the police based on Sirekis’ appearance at the car wash, Respondent, by John and Chris Epp, violated Section 8(a)(1) of the Act on
35 March 29, 2016, as alleged in paragraphs 4(g) and 5 of the complaint.

ii. Physical threat

Statements threatening physical harm for engaging in protected activity, such as filing an unfair labor practice charge, violate Section 8(a)(1) of the Act. See, e.g., *Cox Fire Protection*, 308 NLRB 793 (1992) (finding unlawful manager telling charge-filer, “[t]his isn’t a threat, but I want to kick your ass”). Regardless of the precise words Chris Epp used, it was clear to
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¹⁷ With respect to the threat of physical harm, Chris Epp recalled threatening to “flip the fuck out” on Sirekis, which I find is materially the equivalent of threatening the “ass kicking” to which Sirekis testified.

me, based on his own testimony, that the message he conveyed to Sirekis was serious threat of physical harm should he pursue his unfair labor practice charge. Especially considering that these two men had, shortly before Sirekis' discharge, had a near-physical "run in" requiring them to be physically separated, I find that Chris Epp's statement would undoubtedly give
5 pause to someone in Sirekis' position as to whether to pursue an unfair labor practice charge against Respondent.

Accordingly, I find that, Respondent, through Chris Epp, by threatening Sirekis with physical assault because he filed a charge with the Board, violated Section 8(a)(1) of the Act
10 on March 29, 2016, as alleged in paragraphs 4(f)(2) and 5 of the complaint.

iii. Disparagement

The Board recognizes that "the Act countenances a significant degree of vituperative
15 speech in the heat of labor relations." *Atlas Logistics Group*, 357 NLRB 353, 355 (2011). Indeed, an employer's disparagement of a union or an individual engaged in protected conduct alone does not violate the Act; rather the disparagement must be sufficiently serious to reasonably interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. *Sears, Roebuck & Co.*, 305 NLRB 193 (1991). Moreover, "flip and intemperate"
20 remarks that are mere expressions of personal opinion are protected by the free speech provisions of Section 8(c) of the Act. *Id.* However, where an employer's demeaning remarks are made in the immediate context of an employee's protected activity, they are coercive in that the employee would reasonably interpret them to refer to such activity. See *Corliss Resources, Inc.*, 362 NLRB No. 21, slip op. at 2 (2015) (labeling employee as a "backstabbing
25 piece of shit," coercive when comment followed employee's remark in support of seniority). Moreover, where demeaning remarks are combined with other unlawful conduct, such as unlawful threats, will be deemed sufficiently serious to meet the Board's standard. See, e.g., *Bonanza Sirloin Pit*, 275 NLRB 310, 311–312 (1985) (supervisor calling employee a "piece
30 of shit" constituted unlawful disparagement when followed by physical threat).

Here, Chris Epp's labeling Sirekis a "piece of shit" took place immediately following Sirekis' attempt to serve Respondent with his unfair labor practice charge and was accompanied by a threat of physical violence; this clearly tended to interfere with Sirekis' pursuit of unfair labor practice charges against Respondent. *Prudential Ins. Co. of America*,
35 317 NLRB 357, 357 (1995) (employer equating employee's bargaining representative with a "troublemaker" and threatening that a "bad situation" would befall employee if he pursued grievances tended to interfere with employee's Section 7 rights in violation of 8(a)(1) of Act).

As such, I find that, by disparaging Sirekis because he filed a charge with the Board, Respondent, by Chris Epp, violated Section 8(a)(1) of the Act on March 29, 2016, as alleged
40 in paragraphs 4(f)(1) and 5 of the complaint.

c. The March and July 2016 Interrogations

Based on testimony adduced in the hearing, the General Counsel moved to amend the complaint to allege two additional interrogation allegations based on John Epp's questioning of employees regarding Sirekis' unfair labor practice charge and its underlying facts.
45 I granted that motion to amend and now find these complaint allegations meritorious.

5 The Board has set forth safeguards to minimize the coercive impact of an employer questioning an employee in preparation for a trial or hearing. To privilege such questioning from constituting a Section 8(a)(1) violation, the employer must: (1) communicate to the employee, before the interview begins, the purpose of the questioning; (2) assure the employee that no reprisals will take place for refusing to answer any question or for the substance of any answer given; and (3) obtain the employee's participation in the interview on a voluntary basis. *Johnnie's Poultry Co.*, 146 NLRB 770, 775 (1964), enf. denied 344 F.2d 617, 619 (8th Cir. 1965).

10 The Board generally takes a "bright-line approach in enforcing the[se] requirements" and omitting even one of the three warnings will result in an unfair labor practice finding. *KFMB Stations*, 349 NLRB 373 (2007) (citations omitted). Moreover, to avoid a violation, "the questioning must occur in a context free from employer hostility to union organization...and the questions must not exceed the necessities of the legitimate purpose by prying into other [protected] matters...or otherwise interfering with the statutory rights of employees." *Bill Scott Oldsmobile*, 282 NLRB 1073, 1075 (1987); see also *Wisconsin Porcelain Co.*, 349 NLRB 151, 153 (2007); *Daniel Construction Co.*, 244 NLRB 704, 718 (1979), enfd. 634 F.2d 621 (1980), cert. denied, 450 U.S. 918 (1981).

20 In this case, the credible evidence indicates that John Epp did not provide his workers with the assurances required to avoid violating the Act when he questioned them. While he did apparently state that their answers would not jeopardize their jobs, this sole assurance did not meet the Board's requirements. In particular, in the March interviews, he neither advised employees that their participation in the interview was voluntary, nor did he explain the purpose of the interview. In the July interviews, while it appears that he explained the purpose of the interview (to prepare for the hearing in this matter), he again failed to state that the interview was voluntary. Finally, by his own admission, John Epp used the interview to probe into protected matters outside the scope of Sirekis' unfair labor practice charge, by asking employees if they personally "had issues" about their tips or other working conditions, or were aware of any such "situations" with other employees.

35 As such, I find that interrogating employees about their concerted activities in March and June of 2016, Respondent, by John Epp, violated Section 8(a)(1) of the Act, as alleged in paragraphs 4(h), (i) and 5 of the complaint.

REMEDY

40 Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Respondent, having discriminatorily discharged Jesse Sirekis, must offer him reinstatement and make him whole for any loss of earnings and other benefits. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with *King Soopers, Inc.*, 364 NLRB No. 93 (2016), Respondent shall compensate Sirekis for his search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings, and such expenses shall be calculated separately from taxable net backpay,

with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

5 In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10
(2014), Respondent shall compensate Sirekis for the adverse tax consequences, if any, of
receiving a lump sum backpay award, and, in accordance with *AdvoServ of New Jersey, Inc.*,
363 NLRB No. 143 (2016), Respondent shall, within 21 days of the date the amount of
backpay is fixed either by agreement or Board Order, file with the Regional Director for
10 Region 28 a report allocating backpay to the appropriate calendar year(s). The Regional
Director will then assume responsibility for transmitting the report to the Social Security
Administration at the appropriate time and in the appropriate manner.

CONCLUSIONS OF LAW

15 1. Respondent Greenway Desert Car Wash, LLC is an employer engaged in commerce
within the meaning of Section 2(2), (6) and (7) of the Act.

2. Respondent engaged in unfair labor practices in violation of Section 8(a)(1) by

20 (a) Threatening employees with physical violence based on their protected concerted
activities;

(b) Threatening to call the police on employees based on their protected concerted
activities;

25 (c) Disparaging employees based on their protected concerted activities;

(d) Coercively interrogating employees about their protected concerted activities and
the protected concerted activities of others; and

30 (e) On or about December 5, 2015, discharging employee Jesse Sirekis for engaging
in protected concerted activities.

35 3. The unfair labor practices set forth above affect commerce within the meaning of
Section 2(6) and (7) of the Act.

4. All other allegations are dismissed.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁸

ORDER

Respondent, Greenway Desert Car Wash, LLC, Phoenix, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from:

- (a) Threatening employees with physical violence because of their protected concerted activities.
- (b) Threatening to call the police on employees because of their protected concerted activities.
- (c) Disparaging employees based on their protected concerted activities.
- (d) Interrogating employees about their protected concerted activities and/or the protected concerted activities of others.
- (e) Discharging employees because they engage in protected concerted activities.
- (f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) Within 14 days from the date of this Order, offer Jesse Sirekis full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.
- (b) Make Jesse Sirekis whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.
- (c) Compensate Jesse Sirekis for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year. Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Jesse Sirekis, and within 3 days thereafter, notify Sirekis in writing that this has been done and that the discharge will not be used against him in any way.
- (d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place

¹⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

- 5 (e) Within 14 days after service by the Region, post at its Phoenix, Arizona facility
copies of the attached notice marked “Appendix.”¹⁹ Copies of the notice, on forms
provided by the Regional Director for Region 28, after being signed by
Respondent’s authorized representative, shall be posted by Respondent and
10 maintained for 60 consecutive days in conspicuous places, including all places
where notices to employees are customarily posted. In addition to physical posting
of paper notices, notices shall be distributed electronically, such as by email,
posting on an intranet or an internet site, and/or other electronic means, if
Respondent customarily communicates with its employees by such means.
15 Reasonable steps shall be taken by Respondent to ensure that the notices are not
altered, defaced, or covered by any other material. If Respondent has gone out of
business or closed the facility involved in these proceedings, Respondent shall
duplicate and mail, at its own expense, a copy of the notice to all current
employees and former employees employed by Respondent at any time since May
30, 2015.
- 20 (f) Within 21 days after service by the Region, file with the Regional Director for
Region 28 a sworn certification of a responsible official on a form provided by the
Region attesting to the steps that Respondent has taken to comply.

25 It is further ordered that the complaint allegations are dismissed insofar as they allege
violations of the Act not specifically found.

Dated: Washington, D.C. February 10, 2017

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Mara-Louise Anzalone
Administrative Law Judge

¹⁹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX

**NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefits and protection
Choose not to engage in any of these protected activities

WE WILL NOT do anything to prevent you from exercising the above rights. You have the right to join with your fellow employees in **concerted activities**. These activities include talking to other employees about your wages, hours, and other terms and conditions of your employment, including the theft of your tips.

WE WILL NOT fire you for engaging in concerted activities, including reporting group complaints about tip stealing.

WE WILL NOT threaten you with physical violence because you filed a charge with the National Labor Relations Board (the Board).

WE WILL NOT disparage you (such as by calling you insulting names) because you filed a charge with the Board.

WE WILL NOT ask you about your concerted activities, the concerted activities of others or your involvement in Board proceedings.

WE WILL NOT threaten to call the police on you because you filed a charge with the Board.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the National Labor Relations Act.

WE WILL immediately offer **JESSE SIREKIS (SIREKIS)** reinstatement to his former position, and if that job no longer exists, to a substantially equivalent position, without any loss to his seniority rights or any other privileges, and **WE WILL** immediately make **SIREKIS** whole with interest, compounded on a daily basis, for the bonuses, dividends, wages and benefits he lost because we fired him, including reasonable search-for-work and interim employment expenses.

WE WILL within 14 days, remove from our files, any and all records of the discharge of **SIREKIS** and **WE WILL** within 3 days thereafter, notify **SIREKIS** in writing that we have taken this action, and that the materials removed will not be used as a basis for any future personnel action against him or referred to in response to any inquiry from any employer, employment agency, unemployment insurance office, or reference seeker, or otherwise used against him.

WE WILL compensate **SIREKIS** for the adverse tax consequences, if any, of receiving a lumpsum backpay award, and **WE WILL** file with the Regional Director for Region 28, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

GREENWAY DESERT CAR WASH, LLC
(Employer)

Dated _____

By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

2600 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-3099
Hours: 8:15 a.m. to 4:45 p.m.
602-640-2160

The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CA-171662 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 602-416-4755.